

09/4/18
A. Peters

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
Brandi Simmons,

Plaintiff,

**STIPULATION AND
ORDER OF DISMISSAL**

-against-

16-CV-10032 (VSB) (SDA)

The City of New York, C.O. Damon Waithe, Shield No.
18956, Captain Lee Mitchell, Shield No. 857, C.O. Te-art
Jackson, Shield No. 17034, and C.O. Harrison Ferber, Shield
No. 7226, C.O. François Hyppolite, Shield No. 2635, C.O.
Harry Phannord, Shield No. 15732, and C.O. Alex Staley,
Shield No. 7751,

Defendants.
----- X

WHEREAS, the parties have reached a settlement agreement and now desire to
resolve the remaining issues raised in this litigation, without further proceedings and without
admitting any fault or liability;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by
and between the undersigned, that

1. The above-referenced action is hereby dismissed with prejudice; and

2. Notwithstanding the dismissal of this action in accordance with this agreement, the District Court shall continue to retain jurisdiction over this action for the purpose of enforcing the terms of the settlement agreement reached between the parties and set forth in the Stipulation of Settlement executed by the parties in this matter.

Dated: New York, New York
9/4, 2018

Brandi Simmons
Plaintiff Pro Se
Anna M. Kross Center
09-09 Hazen Street
East Elmhurst, NY 11370

By: Brandi Simmons
Brandi Simmons
Plaintiff Pro Se

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Defendants
100 Church Street, 3rd Floor
New York, New York 10007

By: Megan Conger
Megan Conger
Assistant Corporation Counsel

SO ORDERED:

HON. VERNON S. BRODERICK
UNITED STATES DISTRICT JUDGE

Dated: _____, 2018

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Brandi Simmons,

Plaintiff,

-against-

**STIPULATION OF
SETTLEMENT**

16-CV-10032 (VSB) (SDA)

The City of New York, C.O. Damon Waithe, Shield No. 18956, Captain Lee Mitchell, Shield No. 857, C.O. Te-art Jackson, Shield No. 17034, and C.O. Harrison Ferber, Shield No. 7226, C.O. François Hyppolite, Shield No. 2635, C.O. Harry Phannord, Shield No. 15732, and C.O. Alex Staley, Shield No. 7751,

Defendants.

WHEREAS, plaintiff commenced this action by filing a complaint on or about December 28, 2016, alleging that the defendants violated plaintiff's federal civil rights; and

WHEREAS, defendants City of New York, C.O. Damon Waithe, Shield No. 18956, Captain Lee Mitchell, Shield No. 857, C.O. Te-art Jackson, Shield No. 17034, and C.O. Harrison Ferber, Shield No. 7226, C.O. François Hyppolite, Shield No. 2635, C.O. Harry Phannord, Shield No. 15732, and C.O. Alex Staley, Shield No. 7751, have denied any and all liability arising out of plaintiff's allegations; and

WHEREAS, the parties now desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. The above-referenced action is hereby dismissed against defendants, with prejudice, and without costs, expenses, or attorneys' fees except as specified in paragraph "2" below.

2. Defendant City of New York hereby agrees to pay plaintiff Brandi Simmons the sum of TWO-THOUSAND. FIVE-HUNDRED DOLLARS (\$2,500.00) in full satisfaction of all claims, including claims for costs, expenses and attorneys' fees. In consideration for the payment of this sum, plaintiff agrees to dismissal of all the claims against the defendants and to release defendants City of New York, C.O. Damon Waithe, Shield No. 18956, Captain Lee Mitchell, Shield No. 857, C.O. Te-art Jackson, Shield No. 17034, and C.O. Harrison Ferber, Shield No. 7226, C.O. François Hyppolite, Shield No. 2635, C.O. Harry Phannord, Shield No. 15732, and C.O. Alex Staley, Shield No. 7751; their successors or assigns; and all past and present officials, employees, representatives, and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, from any and all liability, claims, or rights of action alleging a violation of plaintiff's civil rights and any and all related state law claims, from the beginning of the world to the date of the General Release, including claims for costs, expenses, and attorneys' fees.

3. Plaintiff shall execute and serve on the City of New York's attorney by legal tender (either by personal service or certified mail) at 100 Church Street, New York, New York 10007 all documents necessary to effect this settlement, including, without limitation, a General Release, based on the terms of paragraph "2" above, IRS Form W-9, and an Affidavit of Status of Liens. Prior to tendering the requisite documents to effect this settlement, Medicare-recipient plaintiffs must obtain and submit a final demand letter from their Medicare provider(s) for the reimbursement of any conditional payments made for the injuries claimed in this matter.

A Medicare Set-Aside Trust may also be required if future anticipated medical costs are found to be necessary pursuant to 42 U.S.C. § 1395y(b) and 42 C.F.R. §§ 411.22 through 411.26.

4. Nothing contained herein shall be deemed to be an admission by the defendants that they have in any manner or way violated plaintiff's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules or regulations of any department or subdivision of the City of New York. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations, except to enforce the terms of this agreement.

5. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or any agency thereof.

6. Plaintiff agrees to hold harmless defendants regarding any past and/or future Medicare claims, presently known or unknown, in connection with this matter. If Medicare claims are not satisfied, defendants reserve the right to issue a multiparty settlement check naming the Medicare provider as a payee or to issue a check directly to the Medicare provider for the amount claimed in the Medicare provider's final demand letter.

7. This Stipulation of Settlement contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation of Settlement regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

Dated: New York, New York
October 9, 2018

Brandi Simmons
Plaintiff Pro Se
Anna M. Kross Center
09-09 Hazen Street
East Elmhurst, NY 11370

By: Brandi Simmons
Brandi Simmons
Plaintiff Pro Se

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Defendants
100 Church Street, 3rd Floor
New York, New York 10007

By: 
Megan Conger
Assistant Corporation Counsel

GENERAL RELEASE

KNOW THAT I, BRANDI SIMMONS, date of birth 1-15-1973, Social Security No. 058-58-2822, plaintiff in the action entitled Brandi Simmons v. City of New York, C.O. Damon Waithe, Shield No. 18956, Captain Lee Mitchell, Shield No. 857, C.O. Te-art Jackson, Shield No. 17034, and C.O. Harrison Ferber, Shield No. 7226, C.O. François Hyppolite, Shield No. 2635, C.O. Harry Phannord, Shield No. 15732, and C.O. Alex Staley, Shield No. 7751, 16-CV-10032 (VSB) (SDA), as “RELEASOR,” in consideration of the payment of TWO-THOUSAND, FIVE-HUNDRED DOLLARS (\$2,500.00) to me by the City of New York, do hereby release and discharge defendants City of New York, C.O. Damon Waithe, Shield No. 18956, Captain Lee Mitchell, Shield No. 857, C.O. Te-art Jackson, Shield No. 17034, and C.O. Harrison Ferber, Shield No. 7226, C.O. François Hyppolite, Shield No. 2635, C.O. Harry Phannord, Shield No. 15732, and C.O. Alex Staley, Shield No. 7751; their successors or assigns; and all past and present officials, employees, representatives, and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, collectively the “RELEASEES,” from any and all liability, claims, or rights of action alleging a violation of my civil rights and any and all related state law claims, from the beginning of the world to the date of this General Release, including claims for costs, expenses, and attorneys’ fees.

IN FURTHER CONSIDERATION of the payment set forth above, RELEASOR hereby waives, releases and forever discharges RELEASEES from any and all claims, known or unknown, past and/or future conditional payments, arising out of the RELEASOR’S Medicare eligibility and receipt of Medicare benefits related to the claimed injury in this matter and/or arising out of the provision of primary payment (or appropriate reimbursement) including causes of action pursuant to 42 U.S.C. §1395y(b)(3)A of the Medicare, Medicaid and SCHIP Extension Act of 2007.

THIS RELEASE MAY NOT BE CHANGED ORALLY. THE UNDERSIGNED HAS READ

THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

IN WITNESS WHEREOF, I have executed this Release this 21st day of August, 2018.

Brandi Simmons

Brandi Simmons

STATE OF New York COUNTY OF Queens SS.:

On August 21, 2018 before me personally came Brandi Simmons to me known, and known to me to be the individual described in, and who executed the foregoing RELEASE, and duly acknowledged to me that she/he executed the same.

Nadine Griffin
NOTARY PUBLIC

NADINE GRIFFIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01GR6331585
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES 10/13/2019